

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
MOBILE RELAY ASSOCIATES)	File No. 0001558517
)	
Requests for Waiver of the 800 MHz Intercategory)	
Sharing Freeze and Section 90.621(b)(4) of)	
the Commission's Rules)	

ORDER

Adopted: November 21, 2005

Released: November 23, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On December 29, 2003, Mobile Relay Associates (MRA) filed an application for a Business Radio Service Station in Idaho Springs, Colorado.¹ In connection with this application, MRA requested waivers of (1) the Commission's freeze on 800 MHz intercategory sharing in order to permit MRA to utilize an Industrial/Land Transportation channel pair, and (2) the minimum spacing requirements of Section 90.621(b)(4) of the Commission's Rules.² For the reasons set forth below, we dismiss the intercategory sharing waiver request as moot, and deny the short-spacing waiver. Consequently, the application shall be dismissed.

2. *Background.* MRA seeks to operate on channel pair 809/854.8625 MHz, which was allotted to the Industrial/Land Transportation Category.³ MRA's application proposes a new co-channel station located less than 113 kilometers (70 miles) but more than 88 kilometers (55 miles) from co-channel Stations WPBE442, WPEV572 and WPWM562. Section 90.621(b)(4) provides that co-channel stations may be separated less than 113 kilometers (70 miles) but no less than 88 kilometers (55 miles) if the proposed station satisfies certain transmitter power and antenna height limits.⁴ These limits are designed to prevent a proposed station from interfering with an existing co-channel station.⁵ Applicants seeking to be licensed at distances less than those prescribed in the table must demonstrate that the co-channel stations would receive the same or greater interference protection than provided in the table.⁶ MRA concedes that its proposed station fails to satisfy the separation requirements listed in the short-spacing table, but submits contour maps purporting to demonstrate that the 22 dBu F(50,10) interference contour of its proposed operation produces no overlap with the existing 40 dBu F(50,50) contours of Stations WPBE442, WPEV572 and WPWM562.

3. *Discussion.* The Commission amended its rules in WT Docket No. 02-55 to consolidate the Business and Industrial/Land Transportation Pools.⁷ Thus, any eligible Business or Industrial/Land

¹ See FCC ULS File No. 0001558517 (filed Dec. 29, 2004).

² 47 C.F.R. § 90.621(b)(4).

³ See 47 C.F.R. § 90.617(b) (2004).

⁴ 47 C.F.R. § 90.621(b)(4).

⁵ See *id.*

⁶ *Id.*

⁷ See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15126 ¶ 334 (2004), as amended by *Erratum*, 19 FCC Rcd 19651 (WTB PSCID 2004), and *Erratum*, 19 FCC Rcd 21818 (WTB PSCID (continued....))

Transportation entity may be licensed on consolidated Business Industrial/Land channels. Consequently, MRA, as a business entity, has no need to request a waiver because of its business status in order to utilize a previously designated Industrial/Land Transportation channel in the newly consolidated Business Industrial/Land Transportation Pool environment. Hence, because of consolidation of the Business and Industrial/Land Transportation Pools, MRA's request is rendered moot.

4. With respect to the short-spacing waiver request, our engineering staff has carefully analyzed the interference potential of MRA's proposed operation. Based upon our staff's analysis, we conclude that MRA's proposed 22 dBu F(50,10) interference contour would overlap the protected 40 dBu F(50,50) contour of licensed stations WPBE442, WPEV572 and WPWM562. Specifically, a review of MRA's interference analysis shows that MRA used the actual ERP values for the licensed facilities of Stations WPBE442, WPEV572 and WPWM562, but the short-spacing table explicitly requires that all existing stations must be assumed to operate with 1000 watts ERP.⁸ MRA's use of the actual ERP values for Stations WPBE442, WPEV572 and WPWM562 resulted in a reduced protected area for each station, and MRA therefore incorrectly concluded that no contour overlap would be present. As a result, we find that the contour analysis submitted by MRA is defective. Because MRA neither satisfies the separation requirements in the short-spacing table of Section 90.621(b)(4) nor persuasively demonstrates an equivalent level of protection,⁹ a short-spacing waiver grant would be inappropriate and the application will be dismissed.

5. Accordingly, IT IS ORDERED, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Sections 1.925 and 90.621(b)(4) of the Communications Act of 1934, as amended, 47 C.F.R. §§ 1.925, 90.621(b)(4), that the waiver request filed on December 29, 2004 by Mobile Relay Associates in conjunction with application FCC File No. 0001558517 is DISMISSED AS MOOT IN PART AND DENIED IN PART to the extent set forth above.

6. IT IS FURTHER ORDERED, pursuant to Section 1.934(d)(2) of the Commission's Rules, 47 C.F.R. § 1.934(d)(2), that application FCC File No. 0001558517 SHALL BE DISMISSED consistent with this *Order*.

7. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a) and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

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2004) (*800 MHz R&O*). The *800 MHz R&O* was published in the Federal Register on November 22, 2004, and the rule changes took effect January 21, 2005. See 69 Fed. Reg. 67823 (2004).

⁸ See 47 C.F.R. § 90.621(b)(4) Short-Spacing Separation Table note 3.

⁹ See *id.* notes 2 and 3.